

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STEVEN L. INSKEEP,

Plaintiff,

vs.

PEOPLES SAVINGS BANK, et al.,

Defendants.

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Case No. 3:04cv139

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE (DOC. #12) ON PLAINTIFF'S MOTION FOR RECONSIDERATION) (DOC. #11); MOTION FOR RECONSIDERATION DENIED; PLAINTIFF'S OBJECTIONS TO SAID JUDICIAL FILING (DOC. #21) OVERRULED; DECISION AND ENTRY ADOPTING IN PART AND REJECTING IN PART REPORT AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE (DOC. #35) ON MOTION OF DEFENDANTS TO DISMISS (DOC. #27); MOTION TO DISMISS SUSTAINED; PLAINTIFF'S OBJECTIONS TO SAID JUDICIAL FILING (DOC. #41) OVERRULED; FURTHER PROCEDURES ALLOWED OF PLAINTIFF WITHIN STATED PERIOD OF TIME; CAPTIONED CAUSE RETURNED TO UNITED STATES MAGISTRATE JUDGE FOR FURTHER PROCEEDINGS

Based upon reasoning and citations of authority set forth by the United States Magistrate Judge, in his Report and Recommendations (Doc. #12) on the Plaintiff's Motion for Reconsideration (Doc. #11), as well as upon a thorough *de novo* review of this Court's file and the applicable law, said Report and Recommendations are adopted in their entirety. The Plaintiff's Motion for

Reconsideration (Doc. #11) of this Court's Order (Doc. #6), adopting the initial Report and Recommendations of the United States Magistrate Judge (Doc. #4), is overruled. The Plaintiff's Objections (Doc. #21) to the Magistrate Judge's Report and Recommendations (Doc. #12) are overruled.

While this Court fully understands the arguments set forth by the Plaintiff in his Objections, arguments that are well reasoned and persuasively set forth, this Court is powerless, even were it so inclined, to overrule existing precedent on the issue of judicial immunity.

Based upon the reasoning and citations of authority set forth by the United States Magistrate Judge in his Report and Recommendations (Doc. #35) on the Motion to Dismiss of Defendants Peoples Savings Bank, Brice Kadel and Brett Gilbert (Doc. #27), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court adopts the Report and Recommendations of the United States Magistrate Judge on the Motion to Dismiss in its entirety. Plaintiff's claim for relief under Section 1983 is dismissed, with prejudice, as barred by the applicable statute of limitations. Plaintiff's zealousness in prosecuting his criminal appeal, as evidenced in his Motion to Reopen his appeal under App. R. 26, does not serve to toll the running of the statute of limitations applicable to Section 1983 actions in civil cases. Plaintiff's claim under RICO is dismissed, without prejudice to procedures set forth below, for failure to state a claim upon which relief can be

granted. The Motion to Dismiss of the moving Defendants (Doc. #27) is sustained. The Plaintiff's Objections (Doc. #41) to the Report and Recommendations of the United States Magistrate Judge, recommending dismissal of the Plaintiff's Amended Complaint, are overruled.

The Plaintiff's Section 1983 action is barred by the applicable two-year statute of limitations. Although Plaintiff's purported RICO action is filed within the four-year statute of limitations, it is not clear on the face of the Complaint whether it does state a claim upon which relief can be granted under RICO. This Court agrees with the Magistrate Judge that, in response to Defendants' assertion that Plaintiff has not alleged any "racketeering" activity in his Amended Complaint, Plaintiff has responded, not by pointing to specific allegations, but with "sarcastic hyperbole, comparing Defendants to wolves, predators and Nazis." The Magistrate has pointed out, and the Court is in full agreement, that "[w]hile the Plaintiff's writing is colorful and eloquent, color does not substitute for factual allegation." However, rather than bar Plaintiff from seeking relief, as the Magistrate's recommendation of dismissal of the RICO claim with prejudice would accomplish, this Court will dismiss the Plaintiff's RICO claims against the moving Defendants, without prejudice to Plaintiff filing a statement with the Magistrate Judge (with service upon all other Defendants), pointing to specific paragraphs in his Amended Complaint (Doc. #25) which do set forth a pattern of racketeering activity. It will then be the request of this Court that the Magistrate Judge review the Defendants'

submission, *sua sponte*, and, without awaiting a response by the moving Defendants, file a further Report and Recommendations on the Plaintiff's Amended Complaint, setting forth, with specificity, his findings as to whether said Amended Complaint, as explicated by the Plaintiff, does or does not set forth a claim for relief under RICO. If the Magistrate Judge is satisfied that the Amended Complaint, as explained by Plaintiff, does set forth a claim for relief under RICO, he may then revisit this Court's Order, sustaining the Defendants' Motion to Dismiss. It is axiomatic that, unless the Plaintiff can state a claim upon which relief can be granted under RICO, Defendants are under absolutely no obligation to respond to any interrogatories and/or requests for admission, of the type and nature set forth by the Plaintiff in Doc. #34.

The captioned cause is remanded to the United States Magistrate Judge for further proceedings.

/s/ Walter Herbert Rice

September 26, 2005

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Steven L. Inskeep, *Pro se*

Courtesy copy to:

Judge Michael R. Merz